In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 280

PASQUALE J. ACCARDI, ET AL., PETITIONERS

v.

THE PENNSYLVANIA RAILROAD COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' SUPPLEMENTAL MEMORANDUM

In its brief opposing the petition for a writ of certiorari, respondent does not rely upon the sole ground put forward by the Second Circuit as the basis for its decision—that a separation allowance paid to an employee when his job is abolished is only a "fringe benefit" and not either "pay" or some other benefit of seniority which Congress vouchsafed to a re-employed veteran under Section 8 of the Selective Training and Service Act of 1940. 54 Stat. 885, 890. Respondent contends that, although the separation allowances in question were measured and accorded in direct proportion to an employee's "length of compen-

sated service," these payments were "dependent on something other than the mere passage of time," and for this reason did not flow from seniority (Br. p. 6).

We note that the Second Circuit itself has rejected this argument. *Borges* v. *Art Steel Co.*, 246 F. 2d 735, 739. See also, *Moe* v. *Eastern Air Lines*, 246 F. 2d 215, 220 (C.A. 5); and *Spearmon* v. *Thompson*, 167 F. 2d 626 (C.A. 8). Moreover, respondent's contention that "length of compensated service" should not be treated as a form of seniority because the former provides a precise measure of the actual service rendered to the employer (Br., p. 6) ignores the realities of the agreement between respondent and the union. Under the agreement, the separation allowance is determined by crediting a full month of compensated service time for any month in which an employee worked as little as one day (see Pet., p. 8).

For the reasons stated above and in the petition, the writ of certiorari should be granted.

Respectfully submitted,

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